

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
BATESVILLE DIVISION**

JOSH HAYNES

PLAINTIFF

V.

NO: 1:12CV00117 KGB/HDY

KEITH PATE

DEFENDANT

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge Kristine G. Baker. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The detail of any testimony desired to be introduced at the hearing before the District Judge in the form of an offer of

proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

Plaintiff Josh Haynes filed a complaint on November 13, 2012, and service was ordered. On November 28, 2012, the summons was returned unexecuted as to Defendant Keith Pate, who is the only Defendant in this matter (docket entry #8). Service had been attempted at the Jackson County Detention Center, but the summons was returned with a note indicating that it was not deliverable as addressed. In response to an order directing Plaintiff to provide Pate’s correct name or an address at which Pate could be served, Plaintiff indicated that Pate may be employed with the Diaz, Arkansas, Police Department. Therefore, service was attempted there. However, that attempt was also unsuccessful (docket entry #17). On May 9, 2013, the Court entered an order directing Plaintiff to provide an address at which service for Pate could be attempted, and warning him that his failure to provide such an address within 30 days could result in the dismissal of his claims against Pate (docket entry #18).

More than 30 days have passed, and Plaintiff has not provided a new address for Pate, or otherwise responded to the order. Mail sent to Plaintiff’s address of record has been returned as undeliverable (docket entry #19). Under these circumstances, the Court concludes that Plaintiff’s

complaint should be dismissed without prejudice for failure to comply with Local Rule 5.5(c)(2), and failure to respond to the Court's order. *See Miller v. Benson*, 51 F.3d 166, 168 (8th Cir. 1995) (District courts have inherent power to dismiss *sua sponte* a case for failure to prosecute, and exercise of that power is reviewed for abuse of discretion).

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff's complaint be DISMISSED WITHOUT PREJUDICE for failure to comply with Local Rule 5.5(c)(2), and failure to respond to the Court's order.
2. The Court certify that an *in forma pauperis* appeal taken from the order and judgment dismissing this action is considered frivolous and not in good faith.

DATED this 14 day of June, 2013.



UNITED STATES MAGISTRATE JUDGE